

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>March 5, 2015</u>

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JOHN WILEY & SONS, INC.,

Plaintiff,

v.

DRK PHOTO,

Defendant.
-----X

11 Civ. 5454 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

For the reasons set forth at today's conference, the motion for reconsideration is GRANTED in part and DENIED in part.

In light of *Psihoyos v. John Wiley & Sons, Inc.*, 748 F.3d 120 (2d Cir. 2014), the motion for reconsideration is granted with respect to the Court's findings on limitations as to the instances at lines 8 to 56, 87, and 88 of the DRK Chart.

The Court finds that *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014), does not expand the availability of a cause of action under the Copyright Act to owners of a bare right to sue. Accordingly, the motion for reconsideration is denied with respect to DRK Photo's statutory standing to sue for certain instances of infringement. The Court notes that, in light of *Lexmark's* distinction between statutory standing and Article III standing, the Court's decision in this regard does not alter its finding that it has subject matter jurisdiction to adjudicate the claim.

Finally, the Court clarifies that the dismissals on the grounds of lack of statutory standing are without prejudice to refile by parties who do have standing to sue under the Copyright Act.

The Clerk of Court is directed to terminate Docket Entry 114. The parties are directed to submit a joint status letter to the Court no later than **March 13, 2015.**

SO ORDERED.

Dated: March 5, 2015
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

KATHERINE POLK FAILLA
United States District Judge